

Exhibit C

Dep. Test. of T. Hottges

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Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 Case No.: 1:19-cv-05434 (VM)

5 - - - - - x

6 STATE OF NEW YORK, STATE OF)
7 CALIFORNIA, STATE OF COLORADO,)
8 STATE OF CONNECTICUT, STATE OF)
9 COLUMBIA, STATE OF MARYLAND,)
STATE OF MICHIGAN, STATE OF)
MISSISSIPPI, COMMONWEALTH OF)
VIRGINIA, and STATE OF WISCONSIN)
Plaintiffs,)

10 -against-)

11 DEUTSCHE TELEKOM AG, T-MOBILE US)
12 INC., SPRINT CORPORATION and)
13 SOFTBANK GROUP CORP.,)
Defendants.)

14 - - - - - x

15 Tuesday, October 22, 2019
16 9:39 a.m.

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19

20 VIDEO DEPOSITION OF TIMOTHEUS HÖTTGES,
21 taken by Plaintiff State of New York, held at
22 Gibson, Dunn & Crutcher LLP, Telephone House 2-4,
23 Temple Avenue, London EC4Y, United Kingdom reported
24 by Chanelle Malliff, Realtime Court Reporter of the
25 United Kingdom and Europe.

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2 BY MR. MACH:

3 Q. Do you remember documents relating to Project
4 Greenland that referred to the potential for a
5 T-Mobile/Sprint merger under a code name "Superbowl"?

6 A. Yes.

7 Q. Do you know why that transaction was code named
8 "Superbowl"?

9 A. No. I never understand who is inventing these
10 code names and I only remember it was "Swan" and "Hawk" who
11 were representing the companies.

12 Q. I'm going to ask the court reporter to mark
13 Höttges Exhibit 4 please.

14 (Exhibit 4 marked for identification.)

15 Do you have Höttges Exhibit 4 in front of you,
16 sir?

17 A. Yes, I do.

18 Q. And do you recognize Höttges Exhibit 4 as
19 discussion materials used to discuss Project Greenland
20 within DT in early January 2011?

21 A. I'm not 100% sure. I cannot recall the structure
22 of this document a hundred percent. I remember the Project
23 Greenland at that point in time.

24 Q. Could you turn with me, please, to slide 3.
25 I just want to see if it refreshes your recollection.

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2 Q. Do you see where it says "Copper Spectrum"?

3 A. Copper -- to help you, "A" stands for AT&T,
4 "Antelope". "Copper" stands for "C", Clearwire. And
5 "Superbowl" stands for the combination, as we said, on TMUS
6 and Sprint.

7 Q. Thank you. And does this refresh your
8 recollection that this Exhibit 30 (sic) is a DT document
9 discussing Project Greenland in January 2011?

10 A. We definitely discussed this project, yes.

11 Q. I used the wrong exhibit number, so I'm going to
12 try to fix that. This exhibit is also marked Ewens CID
13 Exhibit 30, so I misstated that, and I'll ask the question
14 again to get it clearer.

15 Does the review that we have made refresh your
16 recollection that this Exhibit 4 to your deposition is a DT
17 document discussing Project Greenland in January 2011?

18 A. Yep.

19 Q. Could you turn with me, please, to slide 6 -- I'm
20 sorry, slide 5 of the deck which is the page that ends in
21 5001?

22 A. Yes.

23 Q. And it says:

24 "Superbowl Discussion Topics for Today."

25 Do you see that, sir?

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2 Q. So we'll come back to it, but just to be specific,
3 do you recall ever being told that --

4 A. There was a time --

5 Q. I will withdraw the half pending question and let
6 him answer the question.

7 A. There was a time where people would have said, and
8 might have said, the only way of solving the U.S. problem is
9 by selling the U.S. operation. So, yes there were different
10 opinions at different times and the assessment is always,
11 you know, it's a dynamic process. It's not a static issue.
12 So you always have to adapt your entrepreneurial decisions
13 to the situation in which you are.

14 Q. Apologies if I've asked this already but I want to
15 ask specifically about some of the rationales for the merger
16 again. No, strike that. I won't do that.

17 Was one of the -- strike that. Let's turn to
18 slide 8 please. It's the page that ends 5004.

19 MR. PARKER: All right, we're good.

20 A. 5004.

21 BY MR. MACH:

22 Q. Yes. Are you with me there, sir?

23 A. Yes.

24 Q. It says at the top:

25 "Superbowl is Only Way to Position DT to Compete

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2 with T & VZ".

3 Do you see that?

4 A. Yes.

5 Q. And do you understand the reference to "T and VZ"
6 to be references to AT&T and Verizon?

7 A. Yes.

8 Q. And then it says:

9 "Combine #3 & #4 Players in the U.S."

10 That's a reference to the proposed -- for the
11 discussed transaction between -- strike that.

12 It says:

13 "Combine #3 and #4 Players in the U.S."

14 That is a reference to the merger between T-Mobile
15 and Sprint; correct?

16 A. Yes.

17 Q. Then it says:

18 "Increases scale."

19 Do you see that?

20 A. Yeah.

21 Q. And that was one of the reasons that DT was
22 pondering a merger between T-Mobile and Sprint in 2011;
23 correct?

24 A. Yes.

25 Q. And then it says: "Enhances spectrum portfolio";

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2 right?

3 A. Yes.

4 Q. And that was one of the reasons that DT was
5 pondering a potential merger with Sprint in 2011; right?

6 A. Yes.

7 Q. Skipping down to the bullet at the bottom, it
8 says:

9 "Substantial synergies of [approximately] 30
10 [Billion]."

11 Do you see that?

12 A. Yes.

13 Q. And that was one of the reasons that DT was
14 pondering a potential merger with Sprint in 2011; right?

15 A. Correct.

16 Q. And the third bullet says:

17 "'rule of 3' - potential to reduce price
18 competition".

19 Do you see that, sir?

20 A. Yes.

21 Q. That was also one of the reasons that DT was
22 pondering a potential merger with Sprint in 2011; right?

23 MR. PARKER: Object to the form.

24 A. Yes.

25 BY MR. MACH:

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2 card 5, Volume I in the video deposition of Timotheus
3 Höttges. Going on the record. The time is . Thank
4 you.

5 BY MR. MACH:

6 Q. Welcome back, Mr. Höttges.

7 A. Thank you.

8 Q. The good news is that I am substantially finished
9 asking you about the history of negotiations with Sprint.
10 I have just a couple of very high level follow-up questions
11 and then we'll move on to another topic. I do appreciate
12 your patience.

13 DT has been internally discussing a potential
14 merger with Sprint since at least 2010; right?

15 A. Yes.

16 Q. And throughout that period from 2010 to today DT's
17 reasons for wanting to execute the merger with Sprint have
18 been substantially the same; right?

19 A. Yes.

20 Q. You mentioned earlier today that you have used
21 text messages to discuss a variety of different issues
22 surrounding the merger. Do you recall that?

23 A. I said we are using e-mails, SMS, phone calls and
24 other meetings to exchange things. And SMS I mainly use for
25 organizing processes, to you know to channel the next

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2 that you've discussed the substance of the merger with by
3 text; correct?

4 A. Correct.

5 Q. And the communications that you've had by text
6 with those internal individuals have included discussions
7 about the substance of the merger not merely the logistics
8 of the merger; right?

9 A. Yes.

10 Q. Why did you use -- strike that. Why have you used
11 text messages for these substantive communications instead
12 of an alternative like e-mail?

13 A. This is the way how we are communicating among
14 ourselves. By the way, on every topic. It is very common
15 that we are talking about SMS in our company. We are a
16 telecommunication company and for us SMS is some of the very
17 heavily used services.

18 Q. Is part of the appeal of communicating with your
19 colleagues by text the idea that it's more -- it's a more
20 immediate way to communicate?

21 A. Yes. And sometimes even more private. Because
22 you have to know that in most of the in Deutsche Telekom at
23 least universe there are people reading your e-mails as
24 well. So be it my assistants, be it my staff, people are
25 involved. And when it comes to this sensitive information

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2 Q. So let me clarify the question. I'm asking
3 specifically about the Sprint/T-Mobile transaction. Have
4 you received instructions from DT's lawyers that you should
5 preserve all material relating to the merger?

6 A. Preserve all material. I think we got a
7 notification from you when we announced the deal to do this.
8 In my organization I preserve all documents. I'm not
9 deleting any documents. And the IT department of
10 Deutsche Telekom is handling my SMS clouds, is handling --
11 so my iCloud services, they are handling my mails and the
12 storage of the mails and the documentations. So I honestly,
13 I don't personally care about any of my documents. This has
14 all been handled by the central IT department. By the way,
15 including my private SMS and my private photos. So even
16 this is handled in this environment because we are allowed
17 to use the same phone or the same iPad privately and for
18 business.

19 Q. When you say private SMS, you mean SMS messages
20 sent from your personal --

21 A. Yes, to my wife for instance.

22 Q. Right. I haven't seen those.

23 A. Okay. I am even careful with this SMS!

24 Q. So you said a moment ago that you think you got a
25 notification when you announced the deal to preserve

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2 conditions which we have agreed today we would never, never
3 have made a deal on this basis. We only made this deal
4 because we have a trade-off between the synergies of the
5 network, the excess to the spectrum, and the capabilities to
6 challenge AT&T and Verizon in this 5G environment which is
7 creating for us a benefit of 43 billion minus the
8 dis-synergies which we had to accept in the remedy package
9 enabling DISH as a fourth player.

10 BY MR. PARKER:

11 Q. Mr. Ergen himself is a tough negotiator?

12 MR. MACH: Objection to form.

13 A. I'm more than 20 years in the telecommunication
14 business. I know three tough negotiator. Interesting-wise,
15 a lot of them coming from MVNO kind of businesses. One sits
16 in Germany is I&I United Internet, and Charlie Ergen is
17 definitely among the top three toughest negotiator I ever
18 met in my life.

19 BY MR. PARKER:

20 Q. I want to move on now to Exhibit 4 that counsel
21 marked. Turning to the page, the last four numbers are
22 5004. It appears to be the eighth slide in the deck. Do
23 you see that, sir?

24 A. I see it, yes.

25 Q. And you remember you discussed this with counsel

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2 several hours ago?

3 A. Yes.

4 Q. And you said all of these bullet points here were
5 factors, am I right, or at least under consideration?

6 MR. MACH: Objection to form.

7 A. That's correct.

8 BY MR. PARKER:

9 Q. What is your perspective on the bullet that reads:
10 "'rule of 3' - potential to reduce price
11 competition".

12 What was and is your perspective on that?

13 MR. MACH: Objection to form.

14 A. The "rule of 3" is an irritating, misleading
15 abbreviation for something which was tried to get
16 summarized. It says potential to reduce price competition.
17 I believe that at that point in time the question behind was
18 what can we do to improve our competitive position which was
19 negative free cash flow, not earning our capital costs, and
20 losing customers for years.

21 In this difficult position the answer was we can
22 increase the scale, we have to increase the scale. We have
23 to enhance our spectrum position. We have to gain maybe
24 synergies with somebody to improve our cost position to
25 produce connectivity and we might have the potential to

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2 reduce the price competition which would help us to overall
3 balance the revenue and the profitability of this company
4 going forward. This was the assessment in 2011.

5 I agree that a lot of the topics stay valid of
6 today. Spectrum is for us a scarce resource. It's very
7 difficult to get it. Second, economies of scale is the play
8 of this industry. And synergies is the best way of
9 improving your cost base because the utilization of
10 infrastructure is incremental for the capability for price
11 competition.

12 What we have seen since that point in time is
13 there is no operator in the world who was able to increase
14 his prices. There is no merger and acquisition where we
15 have seen that. And if this assessment of Greenland would
16 have been done today nobody would assume higher prices in
17 this model. Because we have learned over the last 10 years
18 that Moore's law, every day producing more volume at lower
19 prices, is the rule which applies to our industry, and that
20 is the reason that we are now trying to put additional
21 service into the connectivity to have an added value for our
22 customers which they are paying being it content, being it
23 internet connectivity services, being it payment
24 capabilities to others. But this assumption was maybe a way
25 of looking at the business case in 2011. It is definitely

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2 not the way how we are looking on business cases these days
3 because there is no evidence that price competition is going
4 away. The opposite is the case.

5 BY MR. PARKER:

6 Q. Now I want to reiterate this point. Turn to the
7 first page of this document.

8 MR. MACH: Objection to form.

9 BY MR. PARKER:

10 Q. What's the date on this document?

11 A. It's 12 January 2011.

12 Q. Eight and a half years ago?

13 A. That's correct.

14 Q. Did you prepare this document?

15 A. No.

16 Q. Let me ask you a question. And I think you've
17 said, but I want to say it again, okay? What will be the
18 effect of this transaction on prices to ordinary consumers
19 in the United States of America in your judgment as CEO, as
20 senior executive of Deutsche Telekom, sir?

21 MR. MACH: Objection to form.

22 A. Let me start in a picture of this industry without
23 the deal.

24 We have one operator who is creating free cash
25 flow losses on a daily basis, Sprint. Every day he is